



CITY OF MORGAN HILL

COMMUNITY DEVELOPMENT DEPARTMENT – PLANNING DIVISION

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

MARCH 25, 2003

PRESENT: Acevedo, Benich, Engles, Escobar, Lyle, Mueller, Weston

ABSENT: None

LATE: None

STAFF: Community Development Director (CDD) Bischoff, Planning Manager (PM) Rowe, Senior Engineer (SE) Creer and Minutes Clerk Johnson

Chair Acevedo called the meeting to order at 7:02 p.m.

**DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

**OPPORTUNITY FOR PUBLIC COMMENT**

Chair Acevedo opened the public hearing.

With no one present wishing to address matters not appearing on the agenda, the public hearing was closed.

**MINUTES:**

February 25,  
2003

**COMMISSIONERS MUELLER/LYLE MOTIONED TO APPROVE THE  
FEBRUARY 25, 2003 MINUTES, WITH THE FOLLOWING AMENDMENTS:**

- Page 6 Paragraph 6: add (after *approved*): for two sit-down restaurants
- Page 6 Paragraph 6 add (following *compromise*): on learning there was not enough land for two sit-down restaurants.
- Pg 8 bottom paragraph 1<sup>st</sup> sentence: replace "to be a single unit" with "appear like a single project." Also replace "unit" in the next sentence with "project".
- Page 9: 1<sup>st</sup> paragraph: add (following *possible*) it would have added one unit to the RPD if all the lots had been developed at once
- Pg 9 4<sup>th</sup> paragraph 3<sup>rd</sup> line: replace "units" with "parcels".  
Pg 9 last paragraph, lines 12 - 14: Amend: following after "considered", "for ownership until the owner of the required easement area reneged on their previous agreement".
- Page 11 1<sup>st</sup> paragraph: Chair Acevedo had referenced the McLaughlin-Jones project wherein the project was not allowed and he felt that permitting this project to proceed in the micro competition was not consistent with other projects in the City.

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**THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, ESCOBAR, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: NONE, ABSENT: NONE.**

**MARCH 11,  
2003**

**COMMISSIONERS MUELLER/WESTON MOTIONED TO APPROVE  
THE MARCH 11, 2003 MINUTES, WITH THE FOLLOWING AMENDMENTS:**

- Page 3, near bottom of page: (add) Commissioner Lyle questioned the \$6.00 fee, noting it seems low.
- Page 5, 2<sup>nd</sup> paragraph: ~~4.9~~ 4.4
- Page 5, 5<sup>th</sup> paragraph: change after *makes* "no provision for rounding a 10% requirement"
- Page 5, paragraph 8 2<sup>nd</sup> line: after "acceptable" add "in HN 1b", also after "units" in the next line also add "in HN 1b".
- Page 5, paragraph 8. (add) Commissioner Weston continued that the meeting was not taped, indicating this may assist in better and clearer information for the developers.
- Pg 5, paragraph 10: (comment) The second sentence conflicts with the "no contingency" bullet near the bottom of the prior page; staff was asked to review.
- Page 5, paragraph 11: replace *ordinary* with "boundary"
- Page 9, paragraph 3 : 220 ~~222~~
- Page 11, paragraph 5, 2<sup>nd</sup> sentence: *Retention* and *detention* are reversed.

**THE MOTION PASSED WITH THE FOLLOWING VOTE: AYES: ACEVEDO, BENICH, ENGLES, LYLE, MUELLER, WESTON; NOES: NONE; ABSTAIN: ESCOBAR; ABSENT: NONE.**

### **NEW BUSINESS:**

**1. DAA-00-09:  
LLAGAS-  
DELCO**

This is a request to amend the development agreement for the 47-unit Monte Villa project to be located on the south side of Llagas Rd. approximately 350 ft. west of the Hale Ave and Llagas Rd intersection. The amendment request would extend building allocations for a one-year period.

PM Rowe presented the staff report, which he introduced by announcing that the three items (1 – 2- 3) were closely related and he would, in effect, report on all three together, but action on each would be needed.

**2. DAA-00-10:  
HALE-DELCO/  
SHENG**

As to item 1, PM Rowe said, there have been continual and continuing delays through no fault of the applicant. He cited difficulties the applicant has experienced with Santa Clara County Road Department, Airport Department, and other departments as well. Lingering environmental concerns exist, PM Rowe said, citing Llagas Creek and issues with the Santa Clara Valley Water District as an example.

PM Rowe said, reiterating that the problems have not received resolution.

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Calling attention to Resolution No. 03-15 (item 1), PM Rowe stressed the need for date changes as noted in the amended development schedule.

As to item 2, PM Rowe said, Resolution No. 03-16, Exhibit B reflects the corrected time schedule. The project has been granted prior extensions because of these same issues, PM Rowe reported.

### 3. DAA-02-06: LLAGAS- DELCO

Item 3, PM Rowe said, is being withdrawn, as action by the Commissioners at this time is not necessary. However, he cautioned, the item may be returned to a future agenda if action is warranted.

Commissioner Weston questioned if both projects had been previously extended 12 months because of the problems with the water issues, and this is another 12 months, would the project go forward at all?

PM Rowe responded that yes, certain portions of the project were expected to be underway quickly. He also reminded that the applicant (item 1) has filed the subdivision and zoning applications, as well as filing other paperwork for portions of the project.

Chair Acevedo called attention to the letter(s) which the applicants and their representatives have filed with the Commissioners, noting the reasons for the delay, including the departments PM Rowe had mentioned, as well as other Agencies, such as Fish and Game. Chair Acevedo continued by asking if this type of extension is frequently requested? He also inquired if there is a policy in Measure P that deals with requests of this type, continuing that if an original recipient of an allocation then sells the property, for whatever reason, and then the change (extension) is needed by a subsequent owner, what happens?

PM Rowe responded that the City has adopted an 'overall policy' allowing changes, including a limited number of architectural changes, some which can be agreed by staff, while others must go to the Architectural Review Board (ARB) and/or the Planning Commission. He also reminded that any change must not result in any point change, nor must the project quality be diminished in any way. The Planning Department Staff, PM Rowe noted, always reviews the changes for any potential change in the points originally received. Should there be point changes, the project must go before the ARB then returned to the Planning Commission. Ultimate action could be loss of the allocations, he explained.

Commissioner Mueller discussed the policy regarding minor changes which PM Rowe had just described. He explained that the minor changes issues might not be seen by the Planning Commissioners (again), unless there is a specific reason, such as a lot line adjustment.

Chair Acevedo opened the public hearing.

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Dick Oliver, 275 Saratoga Ave, #105, Santa Clara, said the project under discussion had been at the ARB for a full presentation, but the plans couldn't be submitted until the approval was received from the ARB. Mr. Oliver said the approval process took over a month, but now the project is underway. He said that there had been some rain delays in early December, and the Water Control Board would not let work on the three pads, in what the water people considered a sensitive area, proceed until the environmental issues were resolved.

With no other persons present to address the matter, the public hearing was closed.

Commissioner Lyle called attention that on the revised 'Exhibit B' (Resolution 03-16) there should be correction made to the order of Roman numerals. The change was made. Commissioner Lyle inquired if it might be beneficial to have the date changes requested in the past by the Commissioners so that the series of dates are changed to the last day of the month to 'match' a variety of City reports, such as the RDCS housing vacancy report. He stated that the date change would make the reports more clear.

Commissioner Weston asked about the variation of time indicated (2 to 12 months). PM Rowe responded that this time was at the request of the applicant who cannot predict when the issues dealing with the various agencies may be resolved.

**COMMISSIONERS MUELLER/WESTON OFFERED RESOLUTION NO. 03-15, RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT AMENDMENT TO ALLOW FOR A 2 TO 12 MONTH EXTENSION OF TIME. THE RESOLUTION WAS ADOPTED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

Chair Acevedo opened the public hearing for item 2 (DAA-00-10: Hale-Delco/Sheng).

With no one to speak to the matter, the public hearing was closed.

**COMMISSIONERS MUELLER/BENICH OFFERED RESOLUTION NO. 03-16, RECOMMENDING APPROVAL OF A DEVELOPMENT AGREEMENT TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR MEASURE P PROJECT MP-99-31: HALE-DELCO(SHENG), MODIFYING EXHIBIT B TO REFLECT THE DATE CHANGES INDICATED DURING DISCUSSION. THE MOTION PASSED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

*Note: The date changed was October 1, 2003 > September 30, 2003.*

Chair Acedveo opened the public hearing on item 3 (DAA-02-06: Llagas-Delco).

With no persons present indicating a wish to speak to the matter, the public hearing was closed.

**COMMISSIONER MUELLER MOVED TO TABLE THE ITEM. THE MOTION WAS SECONDED BY COMMISSIONER LYLE AND CARRIED WITH THE UNANIMOUS VOTE OF ALL COMMISSIONERS PRESENT.**

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### OTHER BUSINESS:

#### **4. STATUS AND RECOMMEN- DATIONS OF THE MP UPDATE COMMITTEE**

CDD Bischoff presented the report, beginning with a status report of the Measure P Update Committee. Commissioners Lyle, Engles, and Weston were all appointed members of the committee, having been appointed by the City Council to recommend changes to Measure P in anticipation of a vote by the public. CDD Bischoff indicated that there was one item which would have the effect of change; but would not register change; that being the update to the Housing Element. He explained that the directive by ABAG indicate that under the recommendations of the committee, the City will experience a shortfall of 236 housing units if Measure P is extended to the year 2020. CDD Bischoff said that a 'fair share of housing' as projected by ABAG would require an increase of 228 allocations.

After conferring with the Commissioners, Chair Acevedo asked CDD Bischoff to review each of the 24 points listed in his report, following which the Commissioners planned to discuss those items which were contrasted to those in the report.

CDD Bischoff indicated that items 2 – 5 – 7 – 10 – 24 created the major divergence from those items now in place. He then spoke on each, telling Commissioners that some of the changes noted reinforced actions by the Planning Commission and the City Council, cementing authorization(s) of action.

Item 2, CDD Bischoff said, enhances consistency with the General Plan, and deals with the potential of having three subdivisions (eventually) brought into the City boundaries.

Item 5, CDD Bischoff said deals with the downtown set aside to be put in place by the City Council.

Item 7 emphasizes a variation of the mixed use provision of Measure P. With the recommendation, it will be easier for residential development to be built over commercial/retail which will remain on the ground floor. CDD Bischoff said this has been a goal for a time by the City leaders.

Item 10, which is a recommendation for lessening the chance of land shortage which could result in spiking prices of land in the City, CDD Bischoff detailed.

CDD Bischoff said that item 24 will eliminate the East/West split and will define 'corridor'.

Regarding CDD Bischoff's report, Commissioner Benich expressed concern that the survey of the public to be completed by the San Jose State Foundation may require considerable 'education' of the public.

CDD Bischoff explained the parameters of the survey.

Regarding item 2, Commissioner Benich asked about City services to those subdivisions, especially police and fire protection. It was explained that there is mutual aid contracts in place for life threatening instances now. Commissioner Benich continued by saying that language should be added to item 3 reflecting that

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the City is dependent on the California Department of Finance. Commissioner Benich expressed concern that the dates in item 5 appear inconsistent. He continued by inquiring as to the difference between mixed use and vertical mixed use. CDD Bischoff responded with examples.

Commissioner Weston also asked about limiting the size of mixed-use units and how the residential units were counted. CDD Bischoff and PM Rowe explained the rationales.

Commissioner Benich said he was concerned that item 15 was bent to subjectivity. Commissioner Mueller said there would be a need to add standards and criteria to avoid the subjectivity.

Regarding item 23, Commissioner Benich asked if there had been many ~~recessions~~ rescissions by the City Council over the years? CDD Bischoff responded that there had been a few. However, he continued, in spite of many discussions regarding this matter, there have been few instances where the allocations could readily be passed to other projects.

Commissioner Escobar asked about the public workshop for this subject. CDD Bischoff explained that the public hearing notices have been posted.

Responding to other questions, CDD Bischoff explained that many of the recommendations are general policy measures.

Chair Acevedo opened the public hearing.

With no persons indicating an interest in speaking to the matter, the public hearing was closed.

Commissioners turned to the items which concerned them.

Item 2 – Commissioners differed in opinions of how the population count of the three subdivisions may affect the numbers of allocations permitted under Measure P.

Item 3 – Commissioner Mueller indicated a fear that there would be too much flexibility in where the units could be placed if all three subdivisions (Holiday Lake Estates, Casa Lane, El Dorado) were brought into the City at once.

Item 4 – the need for definition of ‘phasing status’; it was discussed that the phrase is ambiguous.

Item 5 – Commissioners pointed out there may be a greater need to address density. CDD Bischoff explained the minimum density of zoning in the General Plan noting the required 70/30 split. He further expanded on the possibility of how the Downtown Plan recommendations would fit with this item. Commissioner Mueller said he thought that the focus of many of the recommendations was in violation of the General Plan, with the emphasis on the recommendations in this report focusing on the downtown. Commissioner Engles reminded that the Downtown Plan has not yet been adopted.

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Item 7 – Commissioner Lyle called attention to the last bullet, which he described as highly controversial. Some of the provisions in this item, he said, are ‘absolute show stoppers’. Commissioner Mueller disagreed, saying the number was too low and wouldn’t ‘pencil out’ financially for developers and consequently was infeasible. He continued by saying it would be important to have set-asides in the downtown, with the City Council having discretion over those set-asides, determining allocations as appropriate. Commissioner Lyle rejoined that many on the committee felt that the item gave too much flexibility to the Council.

Responding to a question, Commissioner Lyle explained the differences between items 5 and 7.

Item 10 was of interest in that this deals with the amounts of land actually available for development. CDD Bischoff said this would help with a ‘real workable’ inventory. One of the issues is that there hasn’t been an accounting for current projects in making the projections for allocation placements, he said. Commissioner Lyle said it is important to factor in the capability of on-going projects.

Item 11, Commissioner Mueller protested, prohibits the in-fill problem, doesn’t fix anything and would cost a myriad of dollars to do. Commissioner Lyle explained that this recommendation is intended to change the current definition of ‘desirable infill’, which has been the reason for uncertainty for some in the past.

Item 15 created considerable dialogue as Commissioners discussed the merits of having the potential points per project raised to 200. Issues such as transit availability, likely weight to downtown projects, apprehension of actual achievement heightened discussion. PM Rowe said that the recommendation may emphasize reduction of traffic trips in the downtown area, as well as increasing walkability to residents.

Item 16 was viewed as a positive in that it may help eliminate hearing each project which is submitted for consideration.

Commissioner Mueller said, “Item 17 bothers me a lot, as it makes getting allocations arbitrary.” Commissioners Weston and Lyle said that this is an attempt to validate present practice.

Commissioner Mueller said that item 23 is of concern as it may be ‘challengable’

Continuing to number 24, Commissioner Mueller was adamant that it is a ‘bad item’, insisting that it requires a 20-year decision with zero flexibility. “It should be left to the Planning Commission and the City Council to decide what core area is. This (item 24) defines that language and it should not. The City will be locked in to a 20 year decision.” Commissioners Weston and Engles disagreed. Chair Acevedo indicated consideration that the Planning Commission and the City Council should be able to define the boundaries. Ultimately, with a ‘straw vote’ it was determined that the Commissioners did not reach agreement, so CDD Bischoff acknowledged there was no direction for change on this item which members of the Committee might be informed.

*Commissioner Escobar was excused at 9:12 p.m. due to conflict with the upcoming item.*

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### 5. REVIEW OF REBUTTAL LETTERS & FINAL SCORING OF MEASURE P APPLICA- TIONS FOR FY 2004-05 OPEN MARKET COMPETI- TION

PM Rowe presented the staff report, calling attention to the scoring adjustments by staff.

PM Rowe was asked to comment on the global issues which were raised during the initial workshop and during the public hearings of the applications.

Regarding streets and roads, PM Rowe said that the definition of collectors and arterials was based on peak hour level of service, as well as traffic within the immediate development. The local street traffic levels provide information as to actual traffic trips generated. He went on to explain that one of the major issues is that developers want points based on information generated after the applications have been submitted. SE Creer said his department looks at recent historical traffic data, also noting that there is, to the best of his knowledge, no threshold for determination of traffic levels for collector functioning as local streets. Commissioner Mueller said it is important to look at the designation of streets in the General Plan as well. Open Space concerns of interior pathways; the (engineer's estimate) contingency cost in Public Facilities; and the rounding issues of Housing Types were all addressed by PM Rowe as being the global issues which created discussions during the public hearings.

PM Rowe then presented the current scoresheet for the projects, reminding that the public hearings have concluded and that the small projects (MP applications 5- 10 – 16 – 17 – 20 – 21) have been repositioned as a group for consideration after the others.

Chair Acevedo announced that 168 points for small projects and 178 for large projects are the minimum threshold for consideration for allocation awards, and consequently those developers whose projects did not receive the minimum should contact staff directly to discuss helpful ways to improve future scoring.

Chair Acevedo opened the public hearing.

Bill McClintock, PO Box 1029, spoke on MP 02-17, also indicating a letter had been submitted regarding Housing Types. He said that the critical issue here is having either nine units, with seven of those being single-family detached and two granny units. Mr. McClintock said that no points were given for the single story or detached units, asking that the Commissioners consider giving more points based on the examples of surrounding areas where single family units are placed.

Carolyn Kammerer, 3160 Crow Canyon Place, #200, San Ramon, representing Warmington Homes, asked Commissioners to consider additional points for MP 02-19 in the Natural and Environmental category. She explained that last year the project had received points for preserving the oak grove at the north of the project, but had been denied the points this year. Mrs. Kammerer also addressed the issues of Open Space and Agricultural Preservation indicating that points would be warranted in those categories as well.



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Joe DiConza, 17310 Hendry Dr., referenced his letter regarding MP-02-07, wherein he asks for additional consideration of Housing Types, saying that he fully intended to comply with the requirements enabling the full points. He discussed the moderate rate housing restrictions, saying it restricts the developer at time of sale, not future sales. Mr. DiConza insisted that he that he have 12 units that meet the moderate rate intents (attached, 1,500 sf, three bedrooms, 2 and this is an R2 project. He stated that he would provide 15 of the 30 units u units for low and moderate income within the project.

Dick Oliver, 275 Saratoga Ave. #105, Santa Clara, (MP-02-14) asked reconsideration of the distance measurements to schools, asking whether in looking at Peet (which he identified as not arterial, but functioning as a collector street) staff had given thought to the crossing students would make in relation to Peet Rd. being an arterial at that point. He said he lives in the project three days per week and can say absolutely that Peet is not a collector as the number of cars is so light.

Mr. Oliver continued that this project required a full EIR with a traffic study. Mr. Oliver cited other projects with higher traffic counts and more lenient requirements for points, as he requested one additional point for being within  $\frac{3}{4}$  of a mile of the school.

With no others to address the agenda item, the public hearing was closed.

Commissioners clarified the rounding issues with staff; PM Rowe referred to the language of the guidelines and the discussions during the workshop and the two public hearings. Commissioners also discussed the moderate rate housing, as well as the resale capabilities of initial buyers. This discussion evolved to a dialogue of housing market issues. Difficulties in having the language and verbiage of the applications made very clear and understandable was also addressed.

SE Creer suggested that Mr. Oliver's arguments in favor of additional points for MP-02-14 'had merit', saying the project was inadvertently caught in the cross fire of semantics of *arterial and collector*. The question is, SE Creer said, of trying to establish guidelines for roads functioning as collectors.

Responding to questions from the Commissioners, SE Creer said he has reviewed the applications and ascertained that scoring in prior years, as well as other current applications, has not established definitive language in whether a road functions as a collector.

Commissioner Mueller said it is important to look at how the current criteria is written, stating that the point is allowable under current language.

Chair Acevedo agreed, saying that from a technical standpoint, the Commission should stand by what the criteria says until it is changed.

Commissioners agreed that it would be important to be consistent in this cycle, but may want to revisit the issue for future competitions.

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Total adjusted scores, following discussion:

MP-02-14 - 178.5

Sub-total: 22.5 in schools category

MP-02-15 – 181

Subtotal in schools (-1 point)

MP-02-19 – 183

Subtotal (+1 natural and environmental)

Staff will prepare a revised score page reflecting the changes directed.

*Chair Acevedo was excused at 10:19 p.m. for the discussion of small projects due to a conflict in proximity to his home.*

Vice-Chair Mueller assumed the gavel.

Regarding MP-02-17, PM Rowe clarified the recommendation of 2 points in Housing Types, with the differences of single family detached, single story, and secondary dwellings being clarified. The RPD requirement for the area accentuates the diversity of the Housing Types.

Commissioner Lyle commented that if diversity of housing is being sought, it isn't found in this application.

Vice-Chair Mueller said that the housing types is not just the nine single-family units, but the secondary (granny) units as well. He stressed that the project has a total of 17 units, and that accounts for the deviation.

Following discussion, the score for MP-02-17 was adjusted as +2 in Housing Types for a total score of 170 points.

Chair Acevedo returned to the meeting at 10:20 p.m. to commence the discussion of awarding the 1-point in Quality of Construction, which the Commissioners had reserved.

Limited numbers of the criteria based scoring had been received. Staff was directed to tally the scores with discussion to proceed at the end of the agenda.

Commissioner Lyle was excused at 10:22 p.m.

*Commissioner Escobar rejoined the meeting at 10:29 p.m.*

### 6. COMMISSION REVIEW AND COMMENTS REGARDING NEW M.H. COURTHOUSE EIR

PM Rowe gave the staff report, noting that Commissioner's comments should be limited to scope and correctness of the EIR. Commissioners Lyle and Benich have submitted written comments to staff regarding the EIR.

Commissioner Lyle returned at 10:31 p.m.

Chair Acevedo opened the public hearing.

With none present to address the matter, the public hearing was closed.

Commissioner Mueller said that he would e-mail comments to the staff for inclusion into the final report, as he has not finished with the document and already had 30 comments.

Chair Acevedo remarked that he has not found articulation of the building itself and is concerned that the aesthetics have a proper forum.

Commissioner Mueller called attention to the workshops scheduled for Thursday (March 27), with an open meeting for the public and Council members in the afternoon, and City and County officials meeting at 7:00 p.m.

Commissioner Mueller asked who will be writing the comments to Santa Clara County from the Planning Commission? PM Rowe responded that staff handles the detail of the report and it is then forwarded to CDD Bischoff and/or the City Manager for finalization.

Discussion with reference to public transit and the location of the proposed courthouse ensued with Commissioner Escobar providing information about the potential for future transit.

**Commissioner's 1-point award in the Quality of Construction category:**

Commissioner Escobar was excused at 10:50 p.m. when discussion ensued regarding the Commissioner's 1-point award in the Quality of Construction category of the Measure P allocation award process.

Following considerable discussion, the one-point for Quality of Construction discussion was tabled by the Chair, with direction to the Commissioners to submit their scoring preferences according to established criteria (March 18, 2003 meeting) no later than April 3, 2003 for action at the April 8, 2003 Planning Commission meeting, which will start at 6:00 p.m.

**ANNOUNCEMENTS:**

PM Rowe reported that at the March 19 City Council Meeting, the zoning for In-N-Out Burger and Applebee's had been postponed at the request of the applicant and will be heard at the April 4, 2003 meeting. Actions by the City Council at the March 19<sup>th</sup> meeting included acceptance of the amendments to the zoning map to bring the document into compliance with the General Plan. PM Rowe also reiterated the announced meetings regarding the proposed Courthouse.

The Burrowing Owl Task Force will meet Thursday, March 27.

Commissioner Engles reported on his attendance at the Planners Institute in San Diego, stating that the underlying theme of the Institute is the increasing difficulty of funding, as the State is cash strapped and targeting the dollars of local governments.

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**ADJOURNMENT:** There being no further business, Chair Acevedo adjourned the meeting at 11:19 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**JUDI H. JOHNSON, Minutes Clerk**

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